

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

REGINA SMITH,

Petitioner,

VS.

JOHN F. PEYTON, JR., Director,
Department of Public Safety, State of
Hawai'i, MILLICENT NEWTON-
EMBRY, Warden, Mabel Bassett
Correctional Center, and MARK J.
BENNETT, Attorney General, State of
Hawai'i,

Respondents.

CIVIL NO. 04-00091 HG-KSC

DECLARATION OF DANIEL H. SHIMIZU

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DANIEL H. SHIMIZU hereby declares as follows:

1. Declarant is the Deputy Prosecuting Attorney responsible to file the brief in response to Petitioner's Brief on the Merits in the above-entitled case;
2. On or about July 3, 2006, Declarant received a copy of the Minute Order filed the same day by this Honorable Court, which granted Petitioner's request for extension of time to file her Brief on the Merits until on or before

August 9, 2006, and allowed Respondents until or before **September 8, 2006**, to file a brief in response;

3. On or about August 9, 2006, Declarant received Petitioner's "Memorandum In Support Of Petition Under 28 U.S.C. § 2254 For Writ Of Habeas Corpus By A Person In State Custody", filed on August 9, 2006 and hereinafter referred to as "Memorandum", a 93-page document;

4. Declarant recently filed answering briefs in the Hawai'i State Supreme Court in **State v. Laysa**, S.C. No. 27735, on August 8, 2006, and **State v. Jackson**, S.C. No. 27499, on August 16, 2006;

5. In addition to the instant case, Declarant is also responsible to prepare and file an answering brief in the Hawai'i State Supreme Court in **State v. Asarin**, S.C. No. 27728, an appeal of a murder conviction, due on September 17, 2006, and an opening brief in the United States Court of Appeals for the Ninth Circuit in **Jess v. Peyton**, No. 06-16186, due on October 5, 2006;

6. Due to Declarant's current caseload, the fact that Declarant will need additional time to reacquaint himself with the instant case as the Answer to Petition for Writ of Habeas Corpus was filed over two years ago, and that considerable time is needed to review Petitioner's 93-page "Memorandum", Declarant has determined that he will require additional time to respond completely and effectively to Petitioner's "Memorandum";

7. For the foregoing reasons, Declarant respectfully requests a thirty-one (31) day extension of time, from September 8, 2006, up to and including October 9, 2006, in which to file the brief in response to Petitioner's "Memorandum" in the instant case;

8. Petitioner's counsel Alexander Silvert was informed of this request for extension and had no objections.

9. This request is made in good faith and not for purposes of unnecessary delay.

Further Declarant sayeth naught.

I, DANIEL H. SHIMIZU, declare under penalty of law that the foregoing is true and correct.

Dated at Honolulu, Hawai'i: August 24, 2006.

Respectfully submitted,

/s/
DANIEL H. SHIMIZU